

1 KAMALA D. HARRIS
2 Attorney General of California
3 JOHN P. DEVINE
4 Supervising Deputy Attorney General
5 TROY B. OVERTON
6 Deputy Attorney General
7 State Bar No. 171263
8 455 Golden Gate Avenue, Suite 11000
9 San Francisco, CA 94102-7004
10 Telephone: (415) 703-5516
11 Fax: (415) 703-5480
12 E-mail: Troy.Overton@doj.ca.gov
13 *Attorneys for Defendant State of California, acting
by and through the California Highway Patrol*

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 MONTEREY BAY CONFEDERATION OF
14 CLUBS; LYLE FLEMING; STEVE
15 VERHAGEN,

16 Plaintiff,

17 v.

18 CITY OF SANTA CRUZ; COUNTY OF
19 SANTA CRUZ; MARIO SULAY; GIL
20 BLANCO, CITY OF CAPITOLA; CITY
21 OF SCOTTS VALLEY; CITY OF
22 WATSONVILLE; CALIFORNIA
23 HIGHWAY PATROL; TWENTY
UNKNOWN SANTA CRUZ, CAPITOLA,
SCOTTS VALLEY, WATSONVILLE,
COUNTY AND/OR STATE DEPUTIES
AND/OR OFFICERS AND OTHER
EMPLOYEES,

24 Defendants.

13 CV13-1231 LHK

14 DEFENDANT CALIFORNIA HIGHWAY
15 PATROL'S NOTICE OF MOTION AND
16 MOTION TO DISMISS;
17 MEMORANDUM OF POINTS AND
18 AUTHORITIES IN SUPPORT THEREOF

19 Date: December 19, 2013
20 Time: 1:30 p.m.
21 Courtroom: 8
22 Judge: The Honorable Lucy H. Koh
23 Trial Date: None
Action Filed: July 30, 2013

26 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

27 PLEASE TAKE NOTICE that on December 19, 2013 at 1:30 p.m. before the Honorable

28 Lucy H. Koh, United States District Judge, in Courtroom 8 of the above-entitled court, located at

1 280 South First Street, 4th Floor, San Jose, California, Defendant State of California, acting by
2 and through the California Highway Patrol, will and hereby does move this Court to dismiss all
3 claims for relief against the California Highway Patrol pursuant to Rules 12(b)(1) and 12(b)(6) of
4 the Federal Rules of Civil Procedure. This motion is made on the grounds that federal court
5 claims against the State of California and its instrumentalities and agencies are barred by the
6 Eleventh Amendment to the United States Constitution and thus, all Claims for Relief in
7 plaintiffs' First Amended Complaint fail to establish subject matter jurisdiction and fail to state
8 claims in which relief can be granted against the California Highway Patrol.

9 This motion is and shall be based upon this notice of motion and motion, the accompanying
10 memorandum of points and authorities, all pleadings and papers on file in the matter herein, and
11 upon such matters as may be presented to the Court at the time of hearing.

12 | Dated: August 22, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOHN P. DEVINE
Supervising Deputy Attorney General

/s/
TROY B. OVERTON
Deputy Attorney General
*Attorneys for Defendant State of California,
acting by and through the California
Highway Patrol*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In their First Amended Complaint, Plaintiffs bring suit for alleged violation of civil rights during an April 10, 2011 charity motorcycle event held in Santa Cruz (Plaintiff's First Amended Complaint ("FAC") 5:11 to 9:16). Plaintiffs name the California Highway Patrol as one of the defendants in this action. However, federal court claims against the State of California and its instrumentalities and agencies are barred by the Eleventh Amendment to the United States Constitution and thus, plaintiff's claims for relief against the California Highway Patrol should be dismissed with prejudice. Moreover, the California Highway Patrol is not a "person" within the meaning of section 1983 and, thus, is not subject to suits for damages under section 1983. Thus, the issue to be decided by this motion is whether plaintiffs' federal court claims against the California Highway Patrol are barred by the Eleventh Amendment to the United States Constitution and whether all of plaintiffs' claims against the California Highway Patrol should be dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs bring suit for an alleged violation of civil rights during an April 10, 2011 charity motorcycle event held in Santa Cruz (Plaintiff's First Amended Complaint ("FAC"), 5:11 to 9:16). Plaintiffs, who include a motorcycle club and two individuals, allege that officers from multiple law enforcement agencies, including Defendant California Highway Patrol, were involved in an orchestrated attempt to stop, detain, arrest, examine, and search every motorcycle club member who attended this event (FAC, 2:26 to 3:15; 5:13-22). Plaintiffs contend that defendants' actions violated their civil rights (FAC, 9:17 to 12:23).

On July 30, 2013, plaintiffs filed a First Amended Complaint alleging two claims for relief against all named defendants, including the California Highway Patrol, as follows:

1st Claim: Violation of Civil Rights (42 U.S.C. § 1983), Fourth and Fourteenth Amendment (unlawful search, seizure, detention, and arrest); and

1 2nd Claim: Violation of Constitutional Right to Due Process and Freedom of Association
 2 (42 U.S.C. § 1983 and § 1988) (Due Process Clause of the Fourteenth Amendment to the United
 3 States Constitution).

4 **III. FEDERAL COURT JURISDICTION OVER THE CLAIMS AGAINST THE STATE OF
 5 CALIFORNIA AND ITS ENTITIES IS BARRED BY THE ELEVENTH AMENDMENT**

6 The Eleventh Amendment provides that:

7 "[T]he judicial power of the United States shall not be construed to extend to
 8 any suit in law or equity, commenced or prosecuted against one of the United
 9 States by citizens of another state"
 U.S. Const. Amend. XI.

10 The Eleventh Amendment bars suits which seek either damages or injunctive relief, even by
 11 a State's own citizens, against a state, an arm of the state, its instrumentalities or its agencies.
 12 See, e.g. *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (holding that
 13 claims against the California Department of Corrections were barred by immunity); *Durning v.*
 14 *Citibank, N.A.*, 950 F.2d 1419, 1422-23 (9th Cir. 1991)(noting that the Eleventh Amendment bars
 15 “federal courts from deciding virtually any case in which a state or the ‘arm of a state’ is a
 16 defendant”). Federal courts have consistently held that the California Highway Patrol is an “arm
 17 of the state” for purposes of the Eleventh Amendment, and is thus cloaked in California’s
 18 sovereign immunity. See e.g. *McCain v. Cal. Highway Patrol*, 2011 WL 3439225, at *3 (E.D.
 19 Cal. Aug. 4, 2011); *Oremus v. Cal. Highway Patrol*, 2010 WL 2817072, at *1-2 (E.D. Cal. July
 20 15, 2010); *May v. Cal. Highway Patrol*, 2010 WL 234868, at *1 (N.D. Cal. Jan. 14, 2010);
 21 *Townsend v. California* 2010 WL 1644740, at *6 (E.D. Cal. April 21, 2010); *Vierra v. Cal.*
 22 *Highway Patrol*, 644 F. Supp. 2d 1219, 1232 (E.D. Cal. 2009). Absent a waiver, the State and its
 23 agencies are immune under the Eleventh Amendment from private actions in federal court. See
 24 *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005).

25 Claimed incursions into federal constitutional rights can only be vindicated through the
 26 statutory remedy provided in 42 U.S.C. § 1983. *Monroe v. Pape*, 365 U.S. 167 (1961); *Mitchum*
 27 *v. Foster*, 407 U.S. 225 (1972). "Section 1983 is not itself a source of substantive rights, but

1 merely provides a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*,
2 510 U.S. 266 (1994) (citations and internal quotations omitted).

3 The United States Supreme Court has held that a state, as well as state entities, are not
4 "persons" within the meaning of section 1983 and, thus, are not subject to suit for damages under
5 section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989); *Gilbreath v.*
6 *Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991). Therefore, neither the State of
7 California nor any of its instrumentalities or agencies can be sued under 42 U.S.C. § 1983 in
8 either federal or state court.

9 The Eleventh Amendment also precludes a plaintiff from bringing pendent state-law claims
10 against a state official in federal court. *Pennhurst State School & Hospital v. Halderman*, 465
11 U.S. 89, 106, 121 (1984). Adhering to the Supreme Court's holding in *Pennhurst*, Ninth Circuit
12 courts have dismissed, on Eleventh Amendment grounds, pendent state-law claims brought
13 against state defendants in federal court. *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320,
14 1327 (9th Cir. 1991); *Ulaleo v. Paty*, 902 F.2d 1395, 1400 (9th Cir. 1990).

15 Given the bar of Eleventh Amendment immunity, the California Highway Patrol requests
16 the dismissal of plaintiffs' 42 U.S.C. § 1983 claims against it and any and all pendent state-law
17 claims for relief in this action.

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CONCLUSION

For the aforementioned reasons, Defendant State of California, acting by and through the California Highway Patrol, respectfully requests this Court grant its motion to dismiss all of plaintiffs' claims for relief against the California Highway Patrol in this action.

Dated: August 22, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOHN P. DEVINE
Supervising Deputy Attorney General

/s/
TROY B. OVERTON
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